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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

In re LYFT, INC. SECURITIES
 LITIGATION

This Document Relates to:
 ALL ACTIONS

Master File No. 4:19-cv-02690-HSG

**LYFT DEFENDANTS' RESPONSE TO
 PLAINTIFF'S STATEMENT OF RECENT
 DECISION**

Hon. Haywood S. Gilliam, Jr.

1 Defendants¹ respectfully submit this response to Plaintiff's Statement of Recent Decision
 2 (ECF No. 90 ("Statement")) (submitting *Boston Retirement System v. Uber Techs, Inc.*, Case No:
 3 3:19-cv-06361-RS, 2020 WL 4569846 (N.D. Cal. Aug. 7, 2020) (ECF No. 90-1, "Uber Order")).

4 The Court should strike the Statement because it is untimely under Local Rule 7-3(d)(2).
 5 Plaintiff submitted the Statement on August 10, 2020, weeks after the July 23, 2020 noticed
 6 hearing date on Defendants' motion to dismiss. Plaintiff recognizes this (ECF No. 90, n.1) but
 7 submitted the Statement anyway without the Court's approval: the Court should strike it on that
 8 basis. In the alternative—because Defendants do not have an opportunity to respond to the
 9 Statement at oral argument, as contemplated by Local Rule 7-3(d)(2) (*see* ECF No. 89 (Court
 10 order vacating the hearing and taking the pending motion to dismiss under submission.))—
 11 Defendants request that the Court consider their response to the Statement below.

12 Contrary to Plaintiff's argument, the Uber Order does not support Plaintiff's claims here.
 13 Consistent with Defendants' argument about Lyft's risk disclosures, Judge Seeborg held that
 14 Uber's risk disclosures were *not* generic. Uber Order, at *5. He found that the Uber plaintiffs
 15 nonetheless stated a claim because—unlike Plaintiff here—they pointed to statements that
 16 “affirmatively created an impression of an optimistic state [of] affairs ... [that] differ[ed] in a
 17 material way from the one that actually existed.” *Id.* at *5-6 (quoting *Brody v. Transitional*
 18 *Hospitals Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002)). Those statements included repeated
 19 assertions that even though Uber had “made ‘missteps’ in its past,” Uber had “changed,” had
 20 “turned over a new leaf” and it was a “new day at Uber.” Judge Seeborg found that, “when
 21 presented in the context of Uber's troubled history and the ‘new day’ theme,” plaintiffs'
 22 allegations that Uber had *not changed* triggered a duty to disclose. *Id.* at *5-7. The plaintiffs
 23 alleged that Uber *continued* to engage in illegal activity when launching in new markets and
 24 *continued* to tolerate sexual harassment and abuse of passengers and employees; plaintiffs also
 25 alleged that Uber had “intentionally delayed” “inevitable” layoffs and restructuring in order to
 26 mislead the market about its financial condition. *Id.* at *5.

27 ¹ Defendants collectively refers to Lyft, Inc. (“Lyft”), Logan Green, John Zimmer, Brian Roberts,
 28 Prashant (Sean) Aggarwal, Jonathan Christodoro, Ben Horowitz, Valerie Jarrett, David Lawee,
 Hiroshi Mikitani, Ann Miura-Ko, and Mary Agnes (Maggie) Wilderotter.

1 Plaintiff does not and cannot point to any similar statements in Lyft's offering materials.
2 The Uber decision is not persuasive or controlling of the outcome here.
3

4 Dated: August 14, 2020

Respectfully submitted,
LATHAM & WATKINS LLP

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